

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1770**

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**Introduced by Assembly Member Dababneh**

February 14, 2014

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An act to ~~amend Section 1624 of the Civil Code, relating to contracts.~~  
*add Section 2941.8 to the Civil Code, relating to real property.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1770, as amended, Dababneh. ~~Contracts: statute of frauds. Real property liens: request to terminate home equity line of credit.~~

*Under existing law, within 30 days after a mortgage has been satisfied, the mortgagee or the assignee of the mortgagee is required to execute a certificate of the discharge of the mortgage, as specified, and to deliver, upon the request of the mortgagor or another authorized person, the original note and mortgage to the person making the request.*

*Existing law requires a creditor to make certain disclosures to a consumer applying for a home equity loan, as defined. Existing federal law relating to lending practices specifies certain circumstances under which a lender may reduce or terminate an existing home equity line of credit.*

*This bill would require a lender, upon receipt of a request from an authorized person, as defined, to terminate a borrower's revolving line of credit secured by a mortgage or deed of trust, also referred to as a home equity line of credit, when the secured property is in escrow. This bill would prescribe the contents of this written request, and would require the authorized person to provide a copy of the written request to the borrower, along with a notice to the borrower relating to the effect of the termination of the home equity line of credit.*

~~Existing law provides that certain contracts are invalid unless the contract, or some note or memorandum of the contract, is in writing and subscribed by the party to be charged.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2941.8 is added to the Civil Code, to read:  
2     2941.8. (a) Upon receipt of a written request from an  
3     authorized person to terminate a revolving line of credit secured  
4     by a mortgage or deed of trust, the lender shall do all of the  
5     following:  
6     (1) Terminate the borrower's right to obtain advances under  
7     the borrower's revolving line of credit.  
8     (2) Apply all sums subsequently paid by or on behalf of the  
9     borrower in connection with the revolving line of credit to the  
10    satisfaction of the revolving line of credit and other sums secured  
11    by the related revolving line security instrument.  
12    (3) When the balance of all outstanding sums secured by the  
13    related revolving line security instrument becomes zero, satisfy  
14    the related revolving line security instrument.  
15    (b) No particular phrasing is required in the written request  
16    provided to the lender to terminate an equity line of credit, but  
17    shall contain at least the following:  
18    (1) The name of each borrower.  
19    (2) The account number of the equity line of credit.  
20    (3) The street address of the property, if appropriate.  
21    (c) For purposes of this section "authorized person" includes  
22    a licensed title insurance company, underwritten title company,  
23    or controlled escrow company, as defined in Sections 12340.4,  
24    12340.5, and 12340.6, respectively, of the Insurance Code, or an  
25    escrow company as used in the Financial Code.  
26    (d) For purposes of this section, "receipt of a written request"  
27    includes confirmation by fax, email, or paper copy sent by certified  
28    mail.  
29    (e) A written request to terminate a revolving line of credit  
30    secured by a mortgage or deed of trust from an authorized person

1 shall be provided to the borrower and be accompanied by the  
2 following language:

3  
4 “NOTICE TO BORROWER”

5 You have a home equity line of credit with \_\_\_\_\_, secured by a  
6 mortgage or deed of trust, and lien, on real property located at  
7 \_\_\_\_\_.

8 Our company is handling the escrow for your transaction. We  
9 are sending the attached notice to your lender, requesting that  
10 your home equity line of credit be terminated. Our reason for  
11 making this request is: \_\_\_\_\_.

12 When your lender receives our request, your lender will  
13 terminate and close your home equity line of credit, and you will  
14 no longer be able to obtain credit advances. However, termination  
15 of your home equity line of credit does not release you from liability  
16 for amounts owed under the account. All sums your lender  
17 subsequently receives in connection with your home equity line of  
18 credit, including any sums we may send to your lender, shall be  
19 applied by your lender to the satisfaction of your account. When  
20 the balance of your account becomes zero, your lender will be  
21 required to cancel the mortgage or deed of trust as a matter of  
22 public record.

23 If you have questions about this notice or our action, please  
24 contact \_\_\_\_\_ by calling us at \_\_\_\_\_ or  
25 writing to us at \_\_\_\_\_.

26 \_\_\_\_\_  
27 (Name of Company)  
28

29 SECTION 1. ~~Section 1624 of the Civil Code is amended to~~  
30 ~~read:~~

31 ~~1624. (a) The following contracts are invalid, unless they, or~~  
32 ~~some note or memorandum thereof, are in writing and subscribed~~  
33 ~~by the party to be charged or by the party's agent:~~

34 ~~(1) An agreement that by its terms is not to be performed within~~  
35 ~~a year from the making thereof.~~

36 ~~(2) A special promise to answer for the debt, default, or~~  
37 ~~misfeasance of another, except in the cases provided for in Section~~  
38 ~~2794.~~

39 ~~(3) An agreement for the leasing for a longer period than one~~  
40 ~~year, or for the sale of real property, or of an interest therein; such~~

1 ~~an agreement, if made by an agent of the party sought to be~~  
2 ~~charged, is invalid, unless the authority of the agent is in writing,~~  
3 ~~subscribed by the party sought to be charged.~~

4 ~~(4) An agreement authorizing or employing an agent, broker,~~  
5 ~~or any other person to purchase or sell real estate, or to lease real~~  
6 ~~estate for a longer period than one year, or to procure, introduce,~~  
7 ~~or find a purchaser or seller of real estate or a lessee or lessor of~~  
8 ~~real estate where the lease is for a longer period than one year, for~~  
9 ~~compensation or a commission.~~

10 ~~(5) An agreement that by its terms is not to be performed during~~  
11 ~~the lifetime of the promisor.~~

12 ~~(6) An agreement by a purchaser of real property to pay an~~  
13 ~~indebtedness secured by a mortgage or deed of trust upon the~~  
14 ~~property purchased, unless assumption of the indebtedness by the~~  
15 ~~purchaser is specifically provided for in the conveyance of the~~  
16 ~~property.~~

17 ~~(7) A contract, promise, undertaking, or commitment to loan~~  
18 ~~money or to grant or extend credit, in an amount greater than one~~  
19 ~~hundred thousand dollars (\$100,000), not primarily for personal,~~  
20 ~~family, or household purposes, made by a person engaged in the~~  
21 ~~business of lending or arranging for the lending of money or~~  
22 ~~extending credit. For purposes of this section, a contract, promise,~~  
23 ~~undertaking or commitment to loan money secured solely by~~  
24 ~~residential property consisting of one to four dwelling units shall~~  
25 ~~be deemed to be for personal, family, or household purposes.~~

26 ~~(b) Notwithstanding paragraph (1) of subdivision (a):~~

27 ~~(1) An agreement or contract that is valid in other respects and~~  
28 ~~is otherwise enforceable is not invalid for lack of a memorandum,~~  
29 ~~note, or other writing and is enforceable by way of action or~~  
30 ~~defense, provided that the agreement or contract is a qualified~~  
31 ~~financial contract as defined in paragraph (2) and (A) there is, as~~  
32 ~~provided in paragraph (3), sufficient evidence to indicate that a~~  
33 ~~contract has been made or (B) the parties thereto by means of a~~  
34 ~~prior or subsequent written contract, have agreed to be bound by~~  
35 ~~the terms of the qualified financial contract from the time they~~  
36 ~~reached agreement (by telephone, by exchange of electronic~~  
37 ~~messages, or otherwise) on those terms.~~

38 ~~(2) For purposes of this subdivision, a “qualified financial~~  
39 ~~contract” means an agreement as to which each party thereto is~~  
40 ~~other than a natural person and that is any of the following:~~

1     ~~(A) For the purchase and sale of foreign exchange, foreign~~  
2     ~~currency, bullion, coin or precious metals on a forward, spot,~~  
3     ~~next-day value or other basis.~~

4     ~~(B) A contract (other than a contract for the purchase of a~~  
5     ~~commodity for future delivery on, or subject to the rules of, a~~  
6     ~~contract market or board of trade) for the purchase, sale, or transfer~~  
7     ~~of any commodity or any similar good, article, service, right, or~~  
8     ~~interest that is presently or in the future becomes the subject of a~~  
9     ~~dealing in the forward contract trade, or any product or byproduct~~  
10    ~~thereof, with a maturity date more than two days after the date the~~  
11    ~~contract is entered into.~~

12    ~~(C) For the purchase and sale of currency, or interbank deposits~~  
13    ~~denominated in United States dollars.~~

14    ~~(D) For a currency option, currency swap, or cross-currency~~  
15    ~~rate swap.~~

16    ~~(E) For a commodity swap or a commodity option (other than~~  
17    ~~an option contract traded on, or subject to the rules of a contract~~  
18    ~~market or board of trade).~~

19    ~~(F) For a rate swap, basis swap, forward rate transaction, or an~~  
20    ~~interest rate option.~~

21    ~~(G) For a security index swap or option, or a security or~~  
22    ~~securities price swap or option.~~

23    ~~(H) An agreement that involves any other similar transaction~~  
24    ~~relating to a price or index (including, without limitation, any~~  
25    ~~transaction or agreement involving any combination of the~~  
26    ~~foregoing, any cap, floor, collar, or similar transaction with respect~~  
27    ~~to a rate, commodity price, commodity index, security or securities~~  
28    ~~price, security index, other price index, or loan price).~~

29    ~~(I) An option with respect to any of the foregoing.~~

30    ~~(3) There is sufficient evidence that a contract has been made~~  
31    ~~in any of the following circumstances:~~

32    ~~(A) There is evidence of an electronic communication~~  
33    ~~(including, without limitation, the recording of a telephone call or~~  
34    ~~the tangible written text produced by computer retrieval),~~  
35    ~~admissible in evidence under the laws of this state, sufficient to~~  
36    ~~indicate that in the communication a contract was made between~~  
37    ~~the parties.~~

38    ~~(B) A confirmation in writing sufficient to indicate that a~~  
39    ~~contract has been made between the parties and sufficient against~~  
40    ~~the sender is received by the party against whom enforcement is~~

1 sought no later than the fifth business day after the contract is made  
2 (or any other period of time that the parties may agree in writing)  
3 and the sender does not receive, on or before the third business  
4 day after receipt (or the other period of time that the parties may  
5 agree in writing), written objection to a material term of the  
6 confirmation. For purposes of this subparagraph, a confirmation  
7 or an objection thereto is received at the time there has been an  
8 actual receipt by an individual responsible for the transaction or,  
9 if earlier, at the time there has been constructive receipt, which is  
10 the time actual receipt by that individual would have occurred if  
11 the receiving party, as an organization, had exercised reasonable  
12 diligence. For the purposes of this subparagraph, a “business day”  
13 is a day on which both parties are open and transacting business  
14 of the kind involved in that qualified financial contract that is the  
15 subject of confirmation.

16 (C) The party against whom enforcement is sought admits in  
17 its pleading, testimony, or otherwise in court that a contract was  
18 made.

19 (D) There is a note, memorandum, or other writing sufficient  
20 to indicate that a contract has been made, signed by the party  
21 against whom enforcement is sought or by its authorized agent or  
22 broker.

23 For purposes of this paragraph, evidence of an electronic  
24 communication indicating the making in that communication of a  
25 contract, or a confirmation, admission, note, memorandum, or  
26 writing is not insufficient because it omits or incorrectly states one  
27 or more material terms agreed upon, as long as the evidence  
28 provides a reasonable basis for concluding that a contract was  
29 made.

30 (4) For purposes of this subdivision, the tangible written text  
31 produced by telex, telefacsimile, computer retrieval, or other  
32 process by which electronic signals are transmitted by telephone  
33 or otherwise shall constitute a writing, and any symbol executed  
34 or adopted by a party with the present intention to authenticate a  
35 writing shall constitute a signing. The confirmation and notice of  
36 objection referred to in subparagraph (B) of paragraph (3) may be  
37 communicated by means of telex, telefacsimile, computer, or other  
38 similar process by which electronic signals are transmitted by  
39 telephone or otherwise, provided that a party claiming to have  
40 communicated in that manner shall, unless the parties have

1 otherwise agreed in writing, have the burden of establishing actual  
2 or constructive receipt by the other party as set forth in  
3 subparagraph (B) of paragraph (3).

4 (e) This section does not apply to leases subject to Division 10  
5 (commencing with Section 10101) of the Commercial Code.

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